

WE KNOW LOCAL GOVERNMENT



Amending Your Zoning Documents

Fall Land Use Seminar

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Why Seek Changes?

- “If it isn’t broken, don’t fix it”, but:
- Changes in state and federal statute
- Adverse experience in litigation
- Changes in population and actual land use
- Changes in technical or environmental practice (BMP’s), and state building codes

A Continuous Process

- Land use regulation is an evolutionary process that never stops
- Ordinance work should continue year round, not just at year end
- Use slow time to craft and improve the ordinance, to be ready for next cycle
- Change is difficult, reach out to citizens to build consensus

Keep Track of Changes Over Time

- Users of the ordinance, whether landowners or officials, need to be able to see how the documents have evolved over time to understand the intent of current provisions.
- Language that has been removed or changed should be accessible to current users.

Examples

- NH Revised Statutes Annotated (RSA's)
 - History and Amendments follow each section
- Fremont Zoning Ordinance
 - “Chronology” section, detailing changes on a year-by-year basis.
- Concord city ordinances, online.
 - Each Section refers to a city council ordinance number and date of adoption.

Documents Created by the Boards

Legislative Body is Not Involved

The Master Plan, RSA 674:1-4

- Minimum contents of the plan in 674:2.
- During preparation and revision, requires solicitation of public comment.
- Requires majority vote per RSA 675:6, following a required public hearing, notice per RSA 675:7; 2 postings and newspaper at least 10 clear days prior to hearing.
 - Don't include day of posting or hearing.

The CIP, RSA 674:5-8

- Prerequisites:
 - Legislative Body authorization to create
 - Master plan in place
- Recommends projects based on need, urgency, time sequence and cost.
- Confer with departments and officials in light of the master plan.
- Produces recommendations as part of annual budget process.

Changing a Regulation

- Subdivision and site review authority comes from the legislative body, it is not automatic. See RSA 674:35 & 43.
- Content suggested by RSA 674:36 and 44.
- Regulations adopted by majority vote following public hearing
 - Notice per RSA 675:7 (10 clear days; newspaper, 2 postings)
 - Not effective until recorded with clerk

Fees

- If fees set by the ordinance, may only be changed at annual or special meeting.
- We suggest fees be set by governing body per RSA 41:9-a to allow response to imposed changes, such as postal rates.
 - Authority from legislative body
 - Changes may be sought at any time
 - Requires a public hearing with 7 days notice and newspaper publication

Changes Approved by the Legislative Body

The Terms of the Zoning Ordinance

Steps in the Process, RSA 675

- No change prior to a public hearing under RSA 675:7.
- Charter towns and cities adopt a process under their charters.
- Towns use RSA 675:3, vote by legislative body on official ballot, not ordinary business by warrant article vote.
- Citizens may petition for change per RSA 675:4 in towns.

Proposals Impact Before They are Adopted

- RSA 676:12, I.
 - Proposed changes may justify withholding a building permit in the 120 days prior to an annual or special meeting.
- RSA 676:12, VI.
 - Once notice of a proposed subdivision or site review has been provided to abutters per RSA 676:4, I (d), no changes to regulation or ordinance affect that application.

Changes Proposed by The Board(s)

- Either Planning Board or Governing Body
- Can propose language, or changes starting day after town meeting until last day to advertise required public hearing (1/23/09)
- Any proposal may be withdrawn until text delivered to town clerk for ballot (2/3/09)
- Proposals from governing body may be recommended or not by the Planning Board, which is noted on the ballot.

Citizen Petition Items, RSA 675:4

- Annual meeting only.
- 25 or more voters by written petition.
- Timing: only between 90 and 120 days prior to meeting (11/10-12/10/2008)
- PB should check with governing body on 12/10, (delay in transfer is common)
- Must conduct a public hearing(advertise by 1/23) and deliver text to clerk on time (2/3).

Citizen Petition Items

- PB recommendation appears on the ballot.
 - Can a petitioned item be changed? ..NO.
 - Can a petitioned item be withdrawn?..NO.
- What if the petition proposes something that is clearly illegal?
 - See RSA 39:3, refusal to place may be illegal
 - Could seek a court order for instructions.
- Can the board create a proposal in response?
 - If there is sufficient time for required hearings, YES.

Text to the Clerk

- RSA 675:3. Text must be to the Clerk on 5th Tuesday prior to the vote by legislative body.
 - Measure back from that date to determine last days to conduct required public hearing(s).
- We recommend not waiting to the last day.
 - Clerk's office closes prior to evening board meetings.
 - Statute silent on whether a fax or e-mail to Clerk after office closes complies with time limit.

Language on the Warrant

- RSA 675:3, VII, required language.
- Statute requires ballot to contain “topical description of substance of amendment”, not the exact full text.
- Ballot language created by the clerk, but PB free to offer a suggestion.
- Full text must be in clerk’s office and posted at polls on election day.

Zoning Protest Petition, RSA 675:5

- If 20% of lot owners in affected area protest in writing, filed with governing body 7 days prior to the vote, the amendment needs 2/3 vote to pass.
- Doesn't apply to areas larger than 1/3 of land area of municipality.
- Petition must be read by moderator at meeting, final ruling may be after the vote.

Effective Dates, Implementation

- Changes effective when the vote is announced.
- May relate back per RSA 676:12 to date of first legal posting of notice.
- Implementation is immediate.
- The process for the next year may start immediately.

Questions?

- Legal Services
 - Questions?
 - Call 1-800-852-3358
 - E-mail legalinquiries@nhlgc.org
 - Attorneys
 - David Connell
 - Paul Sanderson
 - Kim Hallquist
 - Christine Fillmore